

## ANALYSIS OF AMENDED BILL

### Franchise Tax Board

Author: Hancock Analyst: Deborah Barrett Bill Number: AB 583  
Related Bills: See Legislative History Telephone: 845-4301 Amended Date: August 4, 2008  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Voters Clean And Fair Elections Fund

### SUMMARY

This bill would, upon voter approval in 2010, establish the California Clean Money and Fair Elections Act of 2008. This bill would also establish the Clean Money Fund and place the Voters Clean and Fair Elections Fund on the personal income tax (PIT) return as a voluntary contribution fund.

### SUMMARY OF AMENDMENTS

The August 4, 2008, amendments would add and repeal the Voters Clean and Fair Elections Fund as a voluntary contribution fund on the PIT return. The amendments make non-substantive technical changes to the Clean Money and Fair Election provisions and would add provisions relating to lobbyist's contributions to the Clean Money Fund.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide campaign finance reform for California statewide elections for the office of the Secretary of State (SOS).

### EFFECTIVE/OPERATIVE DATE

Because certain provisions of this bill would be required to be approved by California voters at the June 8, 2010, statewide primary election, the effective date of this bill would be the day after approval by the voters. This bill's provisions relating to the voluntary contribution fund on the PIT returns would be operative for tax returns filed on or after January 1, 2011, for the 2010 taxable year.

### POSITION

Pending.

Board Position:	Department Director	Date
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## **ANALYSIS**

### **STATE LAW**

Under the Political Reform Act (PRA), existing law limits the amount of campaign contributions that a person or group can make to a candidate for state office. Public officers are prohibited from spending public money to campaign for office. The PRA can be amended by statutes passed with a two-thirds vote in each house of the Legislature or can be amended if approved by voters in a general election.

Franchise Tax Board's Political Reform Audit Program staff conducts audits of various state and local political entities to determine their compliance with the disclosure and record keeping requirements of the Political Reform Act.

Current state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the 2007 taxable year return.

With the following exceptions, VCFs remain on the PIT return until they are either repealed or fail to meet their minimum contribution amount.

- Except for the California Seniors Special Fund, which has no sunset date, each VCF has a specific sunset date.
- Except for the California Seniors Special Fund, the California Firefighters Memorial Fund, and the California Peace Officer Foundation Memorial Fund, each VCF must meet an initial minimum contribution amount of \$250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

The annual inflation adjustment is based on the percentage change in the California Consumer Price Index. The Franchise Tax Board (FTB) is required to make the following two determinations for each VCF by September 1 of each calendar year:

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify the sponsors of certain specified funds in writing of the minimum contribution amount required for the next calendar year.

If FTB estimates that a VCF will fail to meet or exceed the minimum contribution amount for a calendar year that VCF is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If the designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund, and the actual amount available is less than the total amount contributed, the contribution would be allocated on a pro rata basis to the designated funds.

The general provisions also provide a formal queuing process for adding new contingent voluntary contribution funds to the tax return. New contingent funds are defined as funds that include language specifying that the fund may not be added to the return until another fund is removed. Upon enactment, new contingent funds are only added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return

#### THIS BILL

This bill would repeal a provision of state law that prohibits public officers and candidates from expending public funds for the purpose of seeking public office. This bill would establish the California Clean Money and Fair Elections Act of 2008 as a pilot project for a voluntary system of public financing political campaigns for the SOS.

This bill would provide public financing under specified circumstances to candidates for the office of SOS that with exceptions for small contributions, promise not to raise funds privately. Candidates who do not want to adhere to these requirements would continue to be subject to existing contribution limits<sup>1</sup>.

This bill would create the Clean Money Fund (CMF) and beginning January 1, 2011, after approval by the voters, would transfer an annual amount, subject to a future appropriation by the Legislature, from the General Fund to the CMF. These funds would be use for the purpose of public financing of campaigns and to fund the administrative and enforcement costs of the act.

The bill would set requirements for candidates and political parties relating to fund raising and expenditures of funds. Candidates would be required to participate in at least one debate during primary elections,

This bill would establish the Voters Clean and Fair Elections Fund (Fund) as a voluntary contribution fund. Taxpayers would be able to designate their own funds in excess of tax liability for contribution to the Fund on their PIT returns in full dollar amounts of \$1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the original return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution made pursuant to this bill.

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<sup>1</sup> Government Code section 85301 restricts individual contributions to candidates for public office to \$3,000.

This bill would specify that if the taxpayer's payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This bill would require FTB, when another voluntary contribution fund is removed from the return, to revise the tax return to include a designation space for the Fund. The bill would also require revisions to the instructions specifying that the contribution may be in the amount of \$1 which would be used to provide public funding for the campaigns of qualified candidates for SOS who agree to take no private moneys for their campaigns.

FTB would be required to notify the Controller of both the amount of moneys paid by taxpayers in excess of their tax liability and the amount of refund moneys which taxpayers have designated to be transferred to the Voters Clean and Fair Elections Fund. The Controller would be required to transfer from the PIT fund to the Voters Clean and Fair Election Fund an amount not in excess of the sum of the amounts designated by the individuals for payment into that fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

1. FTB and the Controller for reimbursement of costs incurred in administering the Fund.
2. The Clean Money Fund established under the Government Code.

Beginning with contributions made in the second calendar year the fund appears on the return, this bill would require the Fund to meet a minimum contribution amount for each calendar year. The "minimum contribution amount for a calendar year" is defined as \$250,000 for the second calendar year after the fund appears on the return or an amount adjusted for inflation for contributions made in subsequent years. The law authorizing designations to this fund would be repealed if contributions made under this bill fail to meet the minimum contribution amount.

This bill would require FTB to do the following by September 1 of the second calendar year the fund appears on the return and by September 1 of each subsequent calendar year that the Fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Provide written notice to the Fair Political Practices Commission of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

Beginning with the third calendar year that the fund appears on the return, FTB would be required to adjust the minimum contribution amount as indexed for inflation by September 1 of each calendar year.

If the Fund first appeared on the PIT return for the 2010 taxable year, it would remain on the PIT return until January 1, 2015, in this case the PIT return for the 2014 taxable year, unless a later enacted statute deletes or extends that date, and provided that it meets the annual minimum contribution requirement.

## **PROGRAM BACKGROUND**

The entities audited by FTB are randomly selected by the FPPC at public drawings. The audits are conducted in accordance with generally accepted auditing procedures and include interviewing committee staff, preparing bank reconciliation's, evaluating internal control, and examining documentation of receipts and expenditures, including third party information. At the conclusion of an audit, each entity receives an audit report containing FTB's opinion of its compliance with the PRA and a description of any material issues. Examples of material issues are personal use of campaign funds, inadequate disclosure of information regarding contributions and expenditures, missing disclosure reports, and failure to maintain required records.

Eleven voluntary contribution funds appeared on the 2007 California PIT return. Total contributions to these funds have varied from approximately \$3.4 million for the 1989 taxable year to approximately \$4.2 million<sup>2</sup> for the 2006 taxable year.

## **IMPLEMENTATION CONSIDERATIONS**

Implementing the provisions of this bill would not significantly impact department programs or operations.

## **LEGISLATIVE HISTORY**

AB 1812 (Arambula, Ch. 160, Stats. 2008) extends the repeal date on the California Firefighters Memorial Fund and the California Peace Officer Memorial Fund.

AB 1935 (Fuller, 2008) would add the California Ovarian Cancer Research Fund for taxpayers to designate a contribution on the PIT return. AB 1935 has been referred to the Assembly Concurrence Committee.

AB 2291 (Mendoza, 2008) would add the Low Cost Spay-Neuter Fund for taxpayers to designate a contribution on the PIT return. AB 2291 passed the Assembly and is currently in the Senate Appropriations Committee.

AB 2518 (Torrico, 2008) would add the Northern California Cancer Research Fund for taxpayers to designate a contribution on the PIT return. AB 2518 passed the Assembly and is scheduled for a floor vote.

SB 1249 (Alquist, Ch. 645, Stats. 2006) added general provisions for all existing VCF's by changing the application of the minimum contribution amounts for specified funds and the related requirements for FTB to calculate the required minimum contribution amounts and notify funds of such amounts.

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<sup>2</sup> Amount contributed through December 27, 2007.

## OTHER STATES' INFORMATION

*Illinois, Massachusetts, Michigan, Minnesota, and New York* allow for taxpayers to make charitable contribution designations on the PIT returns.

Of these states, *Illinois, Massachusetts, and Michigan* provide a Military Family Relief Fund designation on their PIT returns.

*Illinois* and *Michigan* requires a minimum contribution amount of \$100,000 for certain funds and have various repeal dates.

*Massachusetts, Minnesota, and New York* do not require a minimum contribution amount and do not specify repeal dates.

The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

## FISCAL IMPACT

Implementing this bill would not significantly impact the department costs

## ECONOMIC IMPACT

Based on data and assumptions discussed below, the PIT revenue loss from this bill would be as follows:

Estimated Revenue Impact of AB 583 Effective On Or After January 1, 2009 Assumed Operative After June 8, 2010			
Clean and Fair	2009-10	2010-11	2011-12
Elections Fund	No impact	-\$15,000	-\$15,000

Any possible changes in employment, personal income, or gross state product that might result from this bill are not taken into account.

### Revenue Discussion:

The revenue impact of this bill would be determined by the amount of contributions to the Voters Clean and Fair Elections Fund and the subsequent itemized deduction of such charitable contributions.

For this estimate, the following assumptions are made:

1. The fund would be added to the 2010 return,
2. The minimum contribution amount (\$250,000) would be achieved each year, and
3. An itemized deduction would be allowed and claimed for each contribution.

By applying an average marginal tax rate of 6%, the estimated revenue loss of this bill would be \$15,000 annually ( $\$250,000 \times 6\% = \$15,000$ ). Because contributions reported on the 2010 tax return are actually made during the 2011 calendar year, the revenue impact would not occur until fiscal year 2011-12.

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